HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
Cr. Rev. No. 38 of 2001

Hon'ble Mr. Justice J.P Singh

State
Versus
Pardeep Kumar and anr.
Decided On : 07-03-06.

Mr. B.S Salathia, AAG for the Petitioner.
Mr.Sunil Sethi, Advocate for the Respondents.

JUDGEMENT

Respondents arrayed as accused in a police challan, u/s 304/109 RPC and 3/25 Arms Act, were discharged by learned Addl. Sessions Judge, Jammu vide order dated 9.5.2001.

State has questioned this order in Criminal Revision Petition No. 38/2001. The prosecution story as translated by learned Addl. Sessions Judge, Jammu reads thus:-

> "Accused Pardeep Kumar running a medical/chemist shop at Shopping Complex, Bakshi Nagar, Jammu. On 12.11.1999, when he was engaged in his shop with a customer respondent/accused No.2 who happens to be a friend of Pardeep Kumar respondent/accused No.1 was also present there; that at about 9.00 p.m Anil Kumar, Titoo alias Tara Chand, Hinto alias Deepak Dogra arrived there and started firing at Sanjay Kumar alias Bakra in order to do away with his life but Ravi Kumar who was present there at the shop of Pardeep Kumar as customer sustained bullet injuries. Accused Pardeep Kumar is alleged to have returned fire from his licensed pistol. It is in the statement of the prosecution witnesses that Pardeep Kumar fired back at the instance of Sanjay Kumar alias Bakra due to which Anil Kumar was hit and due to the injuries sustained thereby died a few paces ahead of the place of occurrence."

After going through the evidence recorded by investigating agency, during the currency of the investigation, the learned Addl. Sessions Judge discharged the accused holding the charge groundless.

Sh. B.S Salathia, learned Addl. Advocate General, submits that although deceased Anil Kumar had fired at Sanjay Kumar alias bakra in order to do away with his life, yet this would not by itself provide any occasion to Pardeep Kumar to have returned fire from his licensed pistol, which according to Sh. Salathia and the prosecution story had been done at the instance of Sanjay Kumar alias Bakra. Learned Addl. Advocate General further submits that the right of private defence ws not available to the respondents in the facts and circumstances of the case.

Sh. Sunil Sethi, learned counsel appearing for the respondents, on the other hand, submits that even if Sanjay Kumar alias Bakra and Pardeep Kumar had not received any injury, yet the right of private defence of body could validly be exercised by any of the persons present there, who had apprehended danger to his life because of the attack by three persons on Sanjay Kumar alias Bakra and others present in the shop of Pardeep Kumar.

Sh.Sunil Sethi refers to Moti Singh v. State of Maharashtra reported as (2002)9 SCC 494, support of his submission.

I have gone through the statements of the witness recorded u/s 161 Cr.P.C by the police as also the judgement cited by learned counsel for the respondents.

Sections 100 and 102 of the Indian Penal Code, which are pari-materia with Sections 100 & 102 of the Ranbir Penal Code, were considered by the Hon'ble Supreme Court in the Judgment cited by Sh. Sethi, learned counsel for the respondents. It would, thus, be profitable to refer to paragraphs 9 and 14 of this judgment, where the Hon'ble Supreme Court proceeds to hold as follows:-

"9. Section 102 of the Indian Penal Code says that the right of private defence of the body commences as soon as a reasonable apprehension of dangerto the body arises from an attempt or even a threat to commit any offence though the offence may not have been committed and the right continues as long as such apprehension of danger to the body continues. Section 100 of the Indian Penal Code confers the right of private defence of the body up to the voluntary causing of death or of any other harm to the assailant; if the offence which occasions the exercise of the right be of any of the acts as may reasonably cause the apprehension that grievous hurt by the consequence of such assault.
14. In our considered opinion the appellant, even if the prosecution version that it was he who inflicted the fatal stab on the deceased is to be accepted as correct, it ended in the exercise of right of private defence. As the reasonable apprehension that the grievous hurt would have been inflicted on one of the accused could not be ruled out on the broad probabilities delineated by the prosecution to be evidence, we are disposed to extend the said right to this appellant. Resultantly the conviction and sentence passed on him cannot be sustained."

The statements of witnesses recorded u/s 161 Cr.P.C disclose that on 12.11.1999, three persons namely Anil Kumar, Titoo alias Tara Chand, Hinto alias Deepak Dogra reached the shop of Pardeep Kumar, with an intention to do away with the lives of Pardeep Kumar and Sanjay Kumar alias Bakra, took out their pistols and started INDISCRIMINATING FIRING, as a result whereof Pardeep Kumar at the instance of Sanjay Kumar alias Bakra fired back, which firing has been concluded by the investigating agency as Firing in Defence.

Ordinarily, the question of exercise of right of private defence of body may not fall for adjudication at the time when the case is to be considered u/s 266 and 267 Cr.P.C, but in peculiar circumstances as in the present case, where the prosecution story itself speaks of

the accused having fired back at the assailants in defence, it becomes the duty of the trial Court to consider the applicability of sections 100 and 102 of the RPC on the admitted facts, as projected by the prosecution.

Submission of Sh.B.S Salathia, Addl. Advocate General, that as the firing in defence has been undertaken at the instance of Sanjay Kumar, alias Bakra, who was not injured in the incident would not provide any right of private defence of body to the accused, is not tenable in view of Moti Singh V. State of Maharashtra, where it has been specifically held by Hon'ble Supreme Court that benefit of the right of private defence can be given to the accused even in the absence of plea in that regard, if evidence shows that accused persons were under such a situation where they could reasonably have an apprehension of danger of the body of Even One of Them.

I find that the learned Addl. Sessions Judge, Jammu, has not committed any impropriety, irregularity and for that matter any illegality in conceding right of private defence of body to the accused. The order of discharge passed by the learned Addl. Sessions Judge, Jammu, thus, does not call for any interference. The Criminal Revision Petition is, therefore, without any merit and is accordingly, dismissed.